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In re Application of:
Takayuki Suza
Serial No.: 10/614,955
Filed: July 08, 2003
Attorney Docket No.: **NE-1143-US/KWG (16815)**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the communication filed January 20, 2005. The communication has been treated as a petition to withdraw the holding of abandonment in the above-identified application under 37 C.F.R. § 1.181. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the issue fee in response to the Notice of Allowance and Issue Fee Due (Notice of Allowance) mailed on October 14, 2004. A Notice of Abandonment was mailed on January 03, 2005.

Petitioner asserts that the Notice of Allowance mailed on October 14, 2004, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Notice of Allowance was not received. Included with the statement are with copies of the docket records where the Notice of Allowance would have been entered were also included.

A review of the written record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition is accompanied by a showing that establishes non-receipt of the Notice of Allowance mailed October 14, 2004. As such, the petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Notice of Allowability and a Notice of Allowance and Issue Fee Due. The shortened statutory periods for response set therein will be reset to run from the date the Notices are re-mailed. Extensions of time for these periods are not available. See 37 C.F.R. § 1.136(c), effective November 07, 2000.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



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